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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,608	07/03/2003	Glenn Butler	LS-001	7297
7590 06/07/2004				
Dugan & Dugan P.C. 18 John Street Tarrytown, NY 10591		EXAMINER JOHNSON III, HENRY M		
		ART UNIT 3739		PAPER NUMBER

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/613,608

**Applicant(s)**

BUTLER, GLENN

**Examiner**

Henry M Johnson, III

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-11 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 101603.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent 4,930,504 to Diamantopoulos et al. Diamantopoulos et al. teach a device for biostimulation of tissue (abstract) using a cluster probe with multiple LEDs (array). Ten 880 nm LEDs are positioned around the circumference and additional LEDs of other wavelengths (i.e. 660 nm) are positioned within the circle of 880 nm LEDs. The LEDs may be uniformly dispersed (Fig. 7). The different wavelengths of LEDs are broadly interpreted as separate arrays. Control circuits are provided to power the arrays (Fig. 4). The visible wavelength LEDs (660 nm) can be used as a targeting mechanism as they illuminate the target area and are coupled to the array as they are integral to the probe. The handle of the probe provides a positioning capability and is interpreted as a positioning device. Regarding the interpretations of targeting and positioning, "During examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification" (MPEP § 2111.01). Clear definition must not be confused with specific limitations.

Regarding claim 11, the method of use of the Diamantopoulos et al. device is inherent in its structure. Arrays of LEDs are provided with specific wavelengths with the intended use of irradiating a tissue area. The device must be positioned to accomplish this use (Col. 9, line 64 to Col. 10, line 19).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,930,504 to Diamantopoulos et al. in view of U.S. Patent 5,860,967 to Zavislan et al. Diamantopoulos et al. is discussed above, but does not disclose imaging of a treated area. Zavislan et al disclose a handheld irradiation device that includes a CCD in the handpiece for imaging the treated area (abstract). Zavislan et al teach the need for a visualization system for tissue such as skin and other non-ocular tissue (Col. 2, lines 5-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the imaging device of Zavislan et al in the invention of Diamantopoulos et al. to solve the problem of imaging of skin as disclosed by Zavislan et al. The control circuitry of Diamantopoulos et al. is capable of controlling (beam control logic) the target visible light as required in claim 10.

***Allowable Subject Matter***

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 3837248 A1 to Teichmann et al. discloses a device for treating skin lesions with an imaging capability.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M Johnson, III whose telephone number is (703) 305-0910. The examiner can normally be reached on Monday through Friday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Henry M. Johnson, III  
Patent Examiner  
Art Unit 3739